

OVERVIEW

Sunrise Analysis: Condominium Association Managers

Report No. 05-10, December 2005

Summary

In House Concurrent Resolution No. 204, the 2005 Legislature requested that the Auditor conduct a “sunrise” analysis of condominium association managers. A sunrise analysis performed in accordance with the Hawai'i Regulatory Reform Act (Chapter 26H, Hawai'i Revised Statutes) requires the Auditor to assess whether new or expanded regulation should be enacted in order to protect the health, safety, and welfare of consumers. Senate Bill No. 1454 of the 2003 legislative session proposed to regulate condominium association managers because of concern over their alleged lack of knowledge about condominium laws and operations. The bill defines condominium association managers as “any person employed or retained by a managing agent for the purposes of managing the operation of the property.”

Hawai'i's Condominium Property Act, Chapter 514A, HRS, governs condominium properties and their management. It enables a form of real estate ownership in which individual members hold title to a specific unit and have an undivided interest as a tenant-in-common with other owners in such common elements as the exterior of buildings, grounds, amenities, internal roads, and infrastructure. The law intends condominiums to be self-governing organizations. An elected board of directors of a condominium property has most of the power and responsibility for managing operations of the property. The law also provides for managing agents who are employed or retained to manage the operation of the property.

Currently, managing agents are regulated under Chapter 514A, HRS, and defined as any person employed or retained for the purposes of managing a property. They must be licensed as real estate brokers or corporations authorized to do business as trust companies, and they must maintain fidelity bonds based on the number of units managed of not less than \$20,000 and not more than \$100,000. However, the law also exempts any active real estate broker from the bonding requirements based on the belief that managing agents are licensed brokers and consumers who might be harmed would have recourse to the Real Estate Recovery Fund.

Senate Bill No. 1454 of the 2003 legislative session proposed a mandatory “certification” program for condominium association managers who are employed by managing agents. Before they can be certified, they must pass a test approved by the Real Estate Commission. The managing agent must register the condominium association manager with the commission and submit evidence that the manager has been certified.



The proposed regulation is unnecessary for several reasons. We found little evidence that condominium association managers have presented a danger to the health, safety, and welfare of the public. Most of the complaints filed at the Regulated Industries Complaints Office related to problems between condominium owners and their boards. In addition, complainants have many remedies available to them. Mediation services are available from the Real Estate Commission and the Regulated Industries Complaints Office. The Legislature has also established a Condominium Dispute Resolution Program that would allow cases that had not been resolved through mediation to be heard by the Commerce Department's Office of Administrative Hearing.

The recent recodification of the Condominium Property Law has addressed many condominium management issues, clarified the powers of the boards of directors, strengthened their enforcement powers, and defined conflicts of interest. It also imposes new bonding requirements of managing agents. The effective date of most of the changes will be July 1, 2006. It would be premature to consider any regulatory changes until the new law comes into effect and its impact on condominium management can be assessed.

For all the above reasons, the proposed regulation is not necessary. In addition, the designation "condominium association manager" is not a title that is commonly used in Hawai'i for those who work for managing agents. Also, the scope of certification is unclear and does not clearly distinguish among those who would be regulated and others who perform similar functions and would not be subject to regulation.

Recommendations and Response

We recommend that Senate Bill No. 1454, 2003 Regular Session not be enacted. The Real Estate Commission of the Department of Commerce and Consumer Affairs had no comments to offer at this time. The commission says that it acknowledges the complexities of community living and condominium governance and will be addressing these issues in its program of work.

Marion M. Higa
State Auditor
State of Hawai'i

Office of the Auditor
465 South King Street, Room 500
Honolulu, Hawai'i 96813
(808) 587-0800
FAX (808) 587-0830